

HIPAA Privacy Rule Checklists Section 164.508 – Authorizations

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I. Test for When Authorization Must Be Obtained

Except as otherwise permitted or required by HIPAA, a covered health care provider may not use or disclose protected health information without a valid authorization. Specifically, covered entities are not required to obtain the individual's authorization to use or disclose protected health information to carry out treatment, payment, or health care operations.

II. Required Contents of a Valid Authorization

A valid authorization must satisfy each of the following elements:

- a. ____ It is written in plain language;
- b. ____ It contains a specific description of the information to be used or disclosed;
- c. ____ It states the name or specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
- d. ____ It states the name or specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
- e. ____ It states an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
- f. ____ It contains a statement of the individual's right to revoke the authorization in writing, except (i) to the extent that the covered entity has already used or disclosed information under the authorization, or (b) if the authorization was obtained as a condition of obtaining insurance coverage;
- g. ____ It contains a description of how the individual may revoke the authorization;
- h. ____ It contains a statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule;
- i. ____ It is signed by the individual and dated; *and*
- j. ____ If the authorization is signed by the individual's personal representative, it must include a description of the representative's authority to act for the individual.

III. Additional Authorization Requirements for Specific Situations

- a. **Authorization Requested by Covered Entity for its Own Uses and Disclosures.** If an authorization is requested by a covered entity for *its own use or disclosure* of protected health information that it maintains, the authorization must comply with the following *additional* requirements:

- ____ It contains a statement that treatment, payment, enrollment in the health plan, or eligibility for benefits is not conditioned on signing the authorization;

Note: This prohibition on conditioning of authorizations does not apply to health plans conditioning enrollment or eligibility for benefits in certain situations, nor to entities

conditioning the provision of health care that is solely for the purpose of creating protected health information.

- _____ It contains a description of each purpose of the requested use or disclosure;
- _____ It contains a statement that the individual may inspect or copy the health information to be used or disclosed and may refuse to sign the authorization; *and*
- _____ If the entity will receive payment, directly or indirectly, for the use or disclosure, the authorization includes a statement that such payment will result.

i. **Authorization for Uses and Disclosures of Protected Health Information Created for Research that Includes Treatment of the Individual***. If the covered entity creates protected health information for the purpose, in whole or in part, of research that includes treatment of individuals, the entity must obtain an authorization that complies with the following *additional* requirements:

- _____ It contains a description of the extent to which such protected health information will be used or disclosed to carry out treatment, payment, or health care operations;
- _____ It contains a description of any protected health information that will not be used or disclosed as permitted by §§ 164.510 and 164.512 for facility directories; involvement of others in the individual's care; notification of family or personal representatives regarding the individual's condition; public health activities; victims of abuse, neglect or domestic violence; health oversight activities; judicial or administrative proceedings; law enforcement purposes; organ donation purposes; or to medical examiners and funeral directors; *and*
- _____ If the covered entity obtained or intends to obtain the individual's *consent*, or has provided or intends to provide the individual with a *notice of privacy practices*, the authorization must refer to that consent or notice and state that the statements made in the authorization are binding.

**Note:* The authorization must comply with the requirements of Section III.a, as well as the requirements of Section III.a.i.

Exclusions. Section III.a.i. *does not apply* to information for which (i) a board-approved waiver of the authorization has been sought; (ii) disclosure is sought solely for review to prepare a research protocol or other similar purpose; or (iii) disclosure is sought solely for research on the information of decedents and is necessary for the research.

b. **Authorization Requested by Covered Entity for Disclosures by Others.** If the authorization is requested by a covered entity *for another covered entity to disclose protected health information* to the covered entity requesting the authorization must comply with the following *additional* requirements:

- _____ It contains a description of each purpose of the requested disclosure;
- _____ It contains a statement that treatment, payment, enrollment in the health plan, or eligibility for benefits is not conditioned on signing the authorization; *and*

Note: This prohibition on conditioning of authorizations does not apply to health plans conditioning enrollment or eligibility for benefits in certain situations, or payment of a claim for specified benefits, nor to entities conditioning the provision of health care that is solely for the purpose of creating protected health information.

_____ It contains a statement that the individual may refuse to sign the authorization.

IV. **Other Rules for Authorizations**

- a. **Defective Authorizations.** An authorization is not valid *if* the document has any of the following defects:

_____ The expiration date has passed or the expiration event is known by the covered entity to have occurred;

_____ The authorization has not been filled out completely, with respect to the requirements in Sections II and III;

_____ The authorization is known by the covered entity to have been revoked;

_____ The authorization lacks an element required in Sections II and III;

_____ The authorization is inappropriately combined with another document; *or*

_____ Any material information in the authorization is known by the covered entity to be false.

- b. **Compound Authorizations.** An authorization for the use or disclosure of protected health information may be combined with another document to create a compound authorization ***only*** in the following situations:

_____ An authorization for the use or disclosure of protected health information created for research that includes treatment of the individual may be combined with (i) a consent to participate in the research; (ii) a consent to use or disclose protected health information to carry out treatment, payment, or health care operations; or (iii) a notice of privacy practices; *or*

_____ An authorization (other than one for the use or disclosure of psychotherapy notes) may be combined with another authorization if the covered entity has *not* conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of one of the authorizations.

- c. **Conditioning Authorizations.**

- i. A covered entity may condition the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization ***only*** in the following situations:

_____ A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use and disclosure of protected health information created for research that includes treatment of the individual;

_____ A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if (i) the authorization is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations, and (ii) the authorization is not for a use or disclosure of psychotherapy notes.

_____ A health plan may condition payment of a claim for specified benefits on provision of an authorization requested by a covered entity for disclosure by another if (i) the disclosure is necessary to determine payment of such claim; and (ii) the authorization is not for a use or disclosure of psychotherapy notes.

- _____ A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.
- d. **Revocation of Authorization.** An individual may revoke an authorization at any time, provided that such revocation be in writing, except to the extent that (i) the covered entity has taken action in reliance thereon, *or* (ii) if the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy.